United States Court of Appeals

for the Second Circuit

AMICUS BRIEF

76-7617

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 76-7617

STANLEY WILLIAMS, et al.,

Plaintiffs - Appellants,

v.

WALLACE SILVERSMITHS, INC.,
A DIVISION OF HMW INDUSTRIES, INC.,

Defendant - Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE

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STATEMENT OF INTEREST

The Equal Employment Opportunity Commission is the agency established by Congress to administer, interpret, and enforce Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. (Supp. V, 1975).

Private suits under the Title provide the Commission with essential assistance in securing compliance with the law. See Alexander v. Gardner-Denver Co., 415 U.S. 36, 44 (1974). This is particularly true of private class action suits. See Jenkins v. United Gas Corp., 400 F.2d 28, 32-33 (5th Cir. 1968). The present case raises issues, the resolution of which will have a substantial impact on the ability of private plaintiffs to maintain class actions under Title VII. Therefore it is in the public interest that the Commission present its views to this Court.

ISSUES PRESENTED

(1) Whether the district court's order refusing to allow plaintiffs, employees of the defendant, to seek relief as class representatives on behalf of unsuccessful applicants is appealable under 28 U.S.C. §1292(a)(1).

(2) Whether the district court erred in holding that plaintiffs, as employees of the defendant, could not represent a class including applicants for employment because (a) as a matter of law, their claims neither present questions sufficiently common to, nor sufficiently typical of, those of applicants to comply with Rules 23(a)(2) and (3) of the Federal Rules, and (b) their interest in eliminating hiring discrimination is not sufficient to ensure adequacy of representation under Rule 23 (a)(4).

STATEMENT OF THE CASE

This is an appeal from a district court order denying class certification of plaintiffs' Title VII action. Plaintiffs are five black employees, a former black employee, and the widow of a former black employee of the defendant, Wallace Silversmiths. They claim that Wallace discriminates against them with respect to promotions because of their race.

They also claim that Wallace discriminates against blacks generally with respect to the assignment, transfer, promotion, compensation, and discharge of employees, and in the recruitment and hiring of applicants.

Plaintiffs brought this suit as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure seeking to represent all blacks employed by the defendant since July 2, 1965 (the effective date of Title VII); all blacks who will be employed by the company in the future; all blacks who have applied unsuccessfully for work with Wallace since July 2, 1965; and all blacks who would have applied at Wallace but were deterred from doing so because of its reputation for discrimination.[1/] Although none of

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1/ Five of the named plaintiffs constitute all of the blacks employed by Wallace at the time suit was filed. Plaintiffs' discovery identified twenty-two black former employees who had worked at Wallace since 1965 and forty-five black applicants rejected by Wallace since then.

the named plaintiffs ever applied unsuccessfully for work at Wallace, they allege that Wallace's hiring discrimination is part of the same discriminatory pattern that affects them as employees and that they are adversely affected by the virtual absence of black co-workers. It is undisputed that for many years the plaintiffs have sought to increase black representation in Wallace's workforce. 2/

The district court declined to certify the class on the grounds that plaintiffs could not meet the prerequisites of Rule 23(a). The court first ruled that plaintiffs could not maintain a class action on behalf of applicants and would-be applicants. It reasoned that because all of the plaintiffs had been hired by Wallace, their claims lack "the requisite commonality or typicality with claims of persons denied employment and deterred from seeking employment"

2/ All seven of the named plaintiffs filed charges with the EEOC in 1971 complaining that Wallace discriminates on the basis of race in hiring. As the defendant admitted in district court, thirty-one of the forty-five rejected black applicants had been referred to Wallace by one or more of the named plaintiffs. See record, Defendant's Memorandum In Opposition To Plaintiffs' Motion For Class Action Certification, pp. 25-28.

and their interests in insuring non-discriminatory hiring are "too general to make them adequate representatives of a class of persons with whom they have no category of grievance in common." Having thus limited the class to the twenty-seven blacks employed by Wallace since the passage of Title VII, the court then held that the proposed class is not so numerous as to make joinder infeasible, and, accordingly denied certification of a class.

ARGUMENT

I.

THE DISTRICT COURT'S ORDER IS APPEALABLE

The district court's order is appealable under 28 U.S.C. §1292(a)(1) which provides for appeals from district court orders refusing to grant an injunction.[3/] This Court has made it clear that the

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3/ 28 U.S.C. §1292(a)(1) provides: "The courts of appeals shall have jurisdiction of appeals from (1) interlocutory orders of the district courts of the United States. . .granting, continuing, modifying, refusing, or dissolving injunctions. . ."

district court need not expressly refuse to grant an injunction in order for §1292(a)(1) to apply. In Build of Buffalo v. Sedita, 441 F.2d 284, 287 (1971), where some of the injunctive relief sought was precluded by the dismissal of claims against some of the defendants, this Court held the order appealable because "it operated as a refusal of a distinct and separate claim for an injunction, for which any other relief that might emerge from the case would never adequately substitute."[4/] See also Abercrombie & Fitch v. Hunting World, Inc., 461 F.2d 1040 (2d Cir. 1972); Stewart-Warner Corp. v. Westinghouse Electric Corp., 325 F.2d 822 (2d Cir. 1973). The logic of this Court's approach is that whether a district court expressly refuses an injunction or

4/ Both Chief Judge Lumbard's concurrence and Judge Anderson's dissent agree that an appeal lies under §1292(a)(1) where "the scope of injunctive relief originally sought is necessarily contracted" by the district court order. 441 F.2d at 290,294.

effectively precludes one from issuing, its order falls within the rationale of §1292(a)(1) that "the danger of serious harm from the court's erroneous belief in the existence of a legal barrier to its entertaining a claim for an injunction. . . outweighs the general undesirability of interlocutory appeals." Stewart-Warner Corp. v. Westinghouse Electric Corp., supra, 325 F.2d at 829 (Friendly, C.J., dissenting). See also Baltimore Contractors v. Bodinger, 348 U.S. 176 (1954).

It follows, although this Court has not had occasion to so hold,[5/] that an order denying class certification which has the effect of denying injunctive relief is appealable under §1292(a)(1). This

5/ In City of New York v. International Pipe & Ceramics Corp., 410 F.2d 295, 299 (1969), this Court ruled that a district court order denying certification in an antitrust case of a class including all governmental units in the country was not appealable under §1292(a)(1). However, the Court based its decision on the failure of the City to show that the district court order would preclude any of the injunctive relief they sought.

view has been consistently adopted by other Courts of Appeals to have considered the question. See Yaffee v. Powers, 454 F.2d 1362 (1st Cir. 1972); Doctor v. Seaboard Coast Line Railroad, __F.2d__, 13 FEP Cases 139, 143-144 (4th Cir. 1976); Jones v. Diamond, 519 F.2d 1090, 1095 (5th Cir. 1975); Waters v. Heublein, Inc., __F.2d__, 13 FEP Cases 1409, 1410 (9th Cir. 1976). See also Hackett v. General Host Corp., 455 F.2d 618, 622 (3rd Cir. 1972). Contra, Williams v. Mumford, 511 F.2d 363 (D.C. Cir. 1975) (5-4 vote denying rehearing en banc).

In the case at bar, the district court's refusal to certify a class including the defendant's applicants will preclude plaintiffs from obtaining any injunctive relief for applicants. Defendant's hiring policies, the reformation of which was one of plaintiffs' purposes in bringing this suit, will be untouched by whatever injunctive relief plaintiffs may obtain. Thus the court's order effectively refuses to grant an injunction and results in precisely the harm that §1292(a)(1) is

designed to eliminate. See Stewart-Warner Corp., supra, 325 F.2d at 829. The order is therefore appealable.

II.

THE DISTRICT COURT ERRED IN REFUSING TO CERTIFY THIS CASE AS A CLASS ACTION ON THE GROUNDS THAT PLAINTIFFS, AS EMPLOYEES, COULD NOT PROPERLY REPRESENT A CLASS INCLUDING APPLICANTS FOR EMPLOYMENT

This Court has admonished that "class actions serve an important function in our judicial system" and that therefore class certification is to be denied only where there is a clear showing that the requirements of Rule 23, liberally interpretated, are not met. Eisen v. Carlisle & Jacquelin, 391 F.2d 555, 560, 563 (1968). Liberal interpretation of Rule 23 is particularly appropriate in Title VII cases. As the Supreme Court stated in Alexander v. Gardner-Denver, 415 U.S. 36, 44 (1974):

> [T]he private right of action remains an essential means of obtaining judicial enforcement of Title VII. In such cases, the private litigant not only redresses his own injury but also vindicates the important congressional policy against discriminatory employment practices. Hutchings v. United States Industries, Inc., 428 F.2d 303, 310 (CA 5 1970); Bowe v. Colgate Palmolive Co., 416 F.2d 711, 715 (CA 7 1969); Jenkins v. United Gas Corp., 400 F.2d 28, 33 (CA 5 1968). See also Newman v. Piggie Park Enterprises, Inc., 390 U.S. 400, 402 (1968).

It is therefore essential to the full implementation of national policy that an individual injured by one manifestation of a pattern of pervasive employment discrimination be allowed to challenge, as a "private attorney general," the entire pattern of discrimination and to eliminate all manifestations of the same bias. See, e.g., Johnson v. Georgia Highway Express, 417 F.2d 1122, 1124 (5th Cir. 1969). Thus, in amending Title VII in 1972 Congress specifically instructed the courts, in applying Rule 23, to be "particulary cognizant of the fact that claims under Title VII involve the vindication of a major public interest," Section by Section Analysis of H.R. 1726, 118 Cong. Rec. 7168 (1972), Legislative

History of the Equal Employment Opportunity Act of 1972, p. 1847 (1972), and warned that "any restriction on [class] actions would greatly undermine the effectiveness of Title VII." Legislative History, supra, p. 436. Congress also endorsed preexisting Title VII case law. Legislative History, supra, p. 1847. By 1972 it was well established that Title VII plaintiffs victimized by one instance of a pattern of discrimination could bring a class action on behalf of the victims of other aspects of the pattern. See Johnson v. Georgia Highway Express, supra, 417 F.2d 1124; Bowe v. Colgate Palmolive, supra, 416 F.2d at 719 (7th Cir. 1969); Tipler v. E.I. duPont de Nemours, 445 F.2d 123 (6th Cir. 1971).

In the case at bar, the district court ruled that, as a matter of law, the claims of black employees subjected to discriminatory employment practices are not sufficiently related to the claims of blacks discriminatorily denied employment to

permit the former to represent the latter in a class action, in light of the requirements of Rule 23(a)(2)-(4). This holding is clearly contrary to the Congressional command that private plaintiffs be permitted to bring class actions aimed at eliminating an entire system of discrimination. It is also contrary to overwhelming judicial authority. As shown below, except in special circumstances not presented in this case, the courts have virtually always held that it is appropriate under the Title VII enforcement scheme to permit plaintiffs, as private attorneys general, to represent a class composed of both employees and applicants. Furthermore, there is authority holding that, apart from their role as private attorneys general, employee-plaintiffs have a sufficient interest in working under nondiscriminatory conditions to challenge discriminatory hiring practices.

A. Plaintiffs Raise Questions Of Law Or Fact Common To The Class.

It is well established that the "common question" requirement of Rule 23(a)(2) is satisified where,

as here, all of the practices challenged by a Title VII plaintiff are rooted in the same bias In the language of the case law endorsed by Congress in 1972:

> "[T]he 'Damoclean threat of a racially discriminatory policy hangs over the racial class [and] is a question of fact common to all members of the class.'" Johnson v. Georgia Highway Express, Inc., supra, 417 F.2d at 1124, citing Hall v. Werthan Bag Corp., 251 F.Supp. 184, 186 (M.D. Tenn. 1966).

At least six of the circuits have held that an employee (or former employee) who seeks to represent applicants in a Title VII class action raises questions common to the class by virtue of his allegations of system wide class based discrimination. Wetzel v. Liberty Mutual Insurance Co., 508 F.2d 239, 246-247 (3rd Cir. 1975), cert. denied, 421 U.S. 1011 (1975); Barnett v. W.T. Grant Co., 518 F.2d 543, 547-548 (4th Cir. 1975); Long v. Sapp, 502 F.2d 34, 42-43 (5th Cir. 1974); Roberts v. Union Co., 487 F.2d 387, 389 (6th Cir. 1973); Reed v. Arlington Hotel Co., 476 F.2d 721, 723 (8th Cir.

1973); Gibson v. ILWU, Local 40, __F.2d__, 13 FEP Cases 997, 1001 (9th Cir. 1976). The Tenth Circuit has endorsed the same view. See Rich v. Martin Marietta Corp., 522 F.2d 333, 340 (1975), citing with approval Johnson v. Georgia Highway Express, supra, for the proposition that employees may attack hiring, firing, and promotion practices never applied to them. There is no contrary appellate authority.[6/]

Although this Court has never ruled that employees may represent applicants in a Title VII class action, it has articulated a view of Title VII that strongly suggests they can. In Voutsis v. Union Carbide, 452

6/ The district court cited EEOC v. Detroit Edison Co., 515 F.2d 301 (6th Cir. 1975) and Castro v. Beecher, 459 F.2d 725 (1st Cir. 1972) in support of its contrary conclusion. Opinion at f.n. 3. In Detroit Edison, however, the court explicitly declared that Rule 23(a)(2) and (3) are to be interpreted broadly to permit plaintiffs to root out all manifestations of an underlying policy of discrimination. Id. at 311. The private plaintiffs in that case were not allowed to represent applicants, under Rule 23(a)(4), because they "did not by pleading or proof, sufficiently advise the court" that they sought to do so. Id. Similarly, in Castro, a case brought under 42 U.S.C §1981, while the court adverted to the district court's finding that there was no common question, its holding was that it would not find that the district

F.2d 889, 892-894 (1971), the Court recognized that Title VII relies upon private litigants to secure "broad compliance with the law" and that it authorizes district courts to conduct a "full scale inquiry into the charged unlawful motivation in employment practices." District courts were instructed not to erect "technical stumbling blocks" to such a full scale inquiry. The full scale district court inquiry contemplated by Voutsis is possible only if private plaintiffs are not barred, as a matter of law, from bringing a class action attacking all of the manifestations of a pattern of discrimination based on animus toward the class. Indeed, this Court in Voutsis seemed to recognize as much by relying upon Jenkins v. United Gas Corp., supra, 400 F.2d 28, 32-33. There the Fifth Circuit made it clear

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6/ Footnote Continued
court abused its discretion in refusing to certify a class containing applicants where, after trial, it was clear that plaintiffs had not fully litigated the recruitment and hiring issues. Indeed the court was careful to limit its holding and to distinguish cases brought under Title VII. Id. at 732, f.n. 8.

that any Title VII action necessarily raises the question of whether the employer makes its employment decision on the basis of class animus, and that therefore the common question requirement is met as a matter of course.

B. Plaintiffs' Claims Are Typical Of The Claims Of The Class.

Although various tests have been formulated to ascertain whether the typicality requirement of Rule 23(a)(3) has been met,[7] the fundamental purpose of the requirement is "simply to assure that the claims of the representative party are similar enough to the claims of the class members to assure that he will adequately represent them." 7 Wright & Miller, supra, §1764 (1975 Pocket Part), p. 91.[8] Ordinarily the

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7/ See Generally, 3B J. Moore, Federal Practice, ¶23.06 (1975); 7 Wright & Miller, Federal Practice and Procedure, §1764 (1972).

8/ See also, e.g., Taylor v. Safeway Stores, 524 F.2d 263, 264 (10th Cir. 1975) discussing the derivation of the typicality requirement from the requirement in original Rule 23 that the representative party "will fairly ensure the adequate representation of all..."

courts have considered the representative party's claims sufficiently similar to those of the class if the common question requirement of Rule 23(a)(2) is met, and there is no indication that the named plaintiff will not adequately represent the class. Thus generally the typicality requirement of Rule 23(a)(3) is viewed as essentially a re-statement of the other requirements of Rule 23(a). See 3B J. Moore, Federal Practice, 23.06-2 (1976). See also, e.g., Penn v. San Juan Hospital, 528 F.2d 1181, 1189 (10th Cir. 1975); Long v. Sapp, supra, 502 F.2d at 42-43 (treating typicality requirement as subsumed under common question requirement); Senter v. General Motors Corp., 532 F.2d 511, 524-525 (6th Cir. 1976)(treating it as subsumed under adequate representation requirement).

Those courts which have attempted to infuse an independent meaning into Rule 23(a)(3) have generally interpreted it to require that plaintiffs demonstrate the existence of an actual class of victims of the

unlawful practices alleged. See Taylor v. Safeway Stores 524 F.2d 263 (10th Cir. 1975); Wright v. Stone Containers Corp., 524 F.2d 1058 (8th Cir. 1975).[9/] The underlying concern in those cases again seems to be adequacy of representation, with the holdings grounded in the belief that representation cannot be adequate when the named plaintiff has not even attempted to define those persons he believes are affected by the practices under challenge. Cf. Senter v. General Motors Corp., supra, 532 F.2d at 521, f.n. 28. In any event, these courts have made it clear that plaintiffs need not complain of the same particular

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9/ In Taylor, supra, the district court initially certified plaintiff as the representative of all black Safeway employees in Colorado. It revoked certification only when it became clear that he had no evidence of discrimination against anyone except employees at the warehouse where he worked. The Tenth Circuit affirmed, citing Rule 23(a)(3). Similarly, in Wright, supra, the Eighth Circuit, affirmed the district court's denial of class certification because the plaintiff had not identified any persons subjected to race discrimination. See also Castro v. Beecher, supra, 459 F.2d 725, discussed supra, f.n. 6 and Doctor v. Seaboard Coast Line, supra, 13 FEP Cases 139, in which one of the plaintiffs was denied representative status under Rule 23(a)(3) because after four years of discovery he did not show that the age limitation he complained of was discriminatory in intent or effect. See 13 FEP Cases at 148.

discriminatory practices as the other class members in order to satisfy Rule 23(a)(3).[10/]

The only other situation in which a court of appeals has held that a Title VII plaintiff's claim was not sufficiently typical under Rule 23(a)(3) was where the plaintiff's personal claim did not fall within the pattern of discrimination he alleged on behalf of the class. Doctor v. Seaboard Coast Line Railroad, supra, 13 FEP Cases 139. There one of the named plaintiffs based his personal claim on allegations that his union had not represented him fairly in a disciplinary hearing. He did not allege that the union's conduct was racially motivated or that it had applied to other blacks. On these facts the court properly ruled that his claim was atypical of the class claim of a pattern of race discrimination.

10/ Indeed the Tenth Circuit in Taylor, supra, and the Eighth Circuit in Wright, supra, reaffirmed prior holdings that the victim of one manifestation of a pattern of discrimination can bring a class action attacking the entire practice. See Rich v. Martin Marietta, supra, 522 F.2d 333 and Reed v. Arlington Hotel, supra, 476 F.2d 721.

At the same time the court did certify as the class representative another named plaintiff who complained of the defendant's promotion policies. The court also indicated that the district court should keep open the possibility of enlarging the class in light of evidence which might be introduced on remand. 13 FEP Cases 145-150.

The plaintiffs in this case have satisfied the typicality requirement of Rule 23(a)(3) under all of the foregoing tests. As indicated above, they raise a question common to the entire class, namely whether the defendant maintains a system wide pattern of discrimination. Moreover, unlike the plaintiff in Doctor, supra, plaintiffs here assert personal claims of discrimination that fall within the pattern of discrimination they allege on behalf of the class. And, most importantly, as developed more fully below, laintiffs are adequate representatives of the entire class. Whatever differences there may be between their claims as employees and the claims of applicant

class members, these differences have not prevented them from vigorously prosecuting the applicants' claims. Prior to bringing this suit, plaintiffs were actively engaged in attempting to increase black representation at Wallace. See supra, f.n. 2. Since commencing this action they have conscientiously pursued applicant claims. Compare cases discussed supra, f.n. 9. Indeed plaintiffs here have identified, by name, every actual applicant they wish to represent. See Affidavit of Mary Ellen Wynn, appended hereto as attachment A. Therefore plaintiffs' claims are sufficiently typical of those of the entire class to meet the requirements of Rule 23(a)(3).

C. Plaintiffs Will Fairly And Adequately Protect The Interests Of The Class.

This Court has stated that a plaintiff's representation is adequate under Rule 23(a)(4) if his attorney is qualified to conduct the litigation, his suit is not collusive, and his interests are not antagonistic to the interests of any class members. Eisen v. Carlisle & Jacquelin, supra, 391 F.2d at 562. In

the present case it is undisputed that plaintiffs' counsel is qualified to prosecute the action and there is no suggestion of collusion between plaintiffs and defendant. Furthermore, neither the defendant nor the district court has pointed to any conflict between plaintiffs' interest and those of applicant class members. Thus the district court should have found that plaintiffs will adequately represent the class.

The district court found to the contrary on the grounds that, since plaintiffs were not injured (or threatened with injury) as a result of hiring discrimination, they will not adequately represent those who have been. It is well established, however, that all the victims of the same discriminatory system have a parallel interest in eliminating the entire system, see, e.g., Wetzel v. Liberty Mutual Ins. Co., supra, 508 F.2d at 247 ("The interests...in combatting the sexually discriminatory policies of the company surely are co-extensive with all female technical employees, whether formerly

or presently employed"), and that this fact is sufficient to make the victim of one discriminatory practice the adequate representative of the victims of all others, absent a showing of a concrete conflict of interest. This view is implicit in all of the cases allowing employees to represent applicants in a class action, see cases cited supra, at 14 , and is confirmed by the history of the case at bar. As indicated above, plaintiffs have sought for years to increase black representation in the Wallace workforce, both by actively recruiting black applicants for employment and by challenging the company's hiring practices in their 1971 EEOC charges.

Moreover, although they need not do so to establish the adequacy of their representation, plaintiffs allege that they are personally aggrieved by the absence of black co-workers. The district court disagreed because it considered the injury from racial isolation "too general in nature". However,

other courts have recognized that black employees have a vital self-interest in increasing black hires. In Gray v. Greyhound Lines, __F.2d__, 13 FEP Cases 1401 (1976), the District of Columbia Circuit noted the very real injury, economic and psychological, that results from racial isolation at the wo' place, emphasizing that blacks in a virtually all white environment are highly susceptible to unfair discipline and promotions practices. The court held that black employees are aggrieved by their employer's hiring discrimination. See also Rogers v. EEOC, 454 F.2d 234 (5th Cir. 1971).

Supreme Court law too strongly suggests that employees are aggrieved by the absence of co-workers of the same race. In Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972), the Court held that whites living in a segregated apartment building are aggrieved by the loss of opportunities for contact with members of other races. It follows that the loss of opportunities for contact with

members of one's own race at the workplace is similarly injurious. See Sosna v. Iowa, 419 U.S. 393, 413, f.n. 1 (White, J dissenting) (1975). Cf. Brown v. Board of Education, 347 U.S. 483, 494 (1954).[11/]

In sum, there is no evidence of any conflict of interest between the named plaintiffs and the applicants they seek to represent. Rather, the two groups share a parallel interest in breaking down the system of discrimination that injures them both. Moreover, because they are actually aggrieved by the defendant's hiring policies, plaintiffs have a further interest

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11/ In this connection, the Supreme Court has observed that a person admitted into a discriminatory system is often a more able opponent of its exclusionary practices than a person illegally excluded. See Sullivan v. Little Hunting Park, 346 U.S. 229, 237 (1969); Barrows v. Jackson, 346 U.S. 249, 259 (1953). This is likely to be true in employment cases, such as this one, where the rejected applicant , who is unfamiliar with the policies of the would-be employer, can only guess whether his rejection was discriminatory, whereas the employee, who knows the racial makeup of the company and understands the mechanics of its discriminatory practices, is in a position to document the discriminatory nature of the system.

in vigorously combatting these policies. Finally, they have vigorously combatted them for many years. Thus plaintiffs will fairly and adequately protect the interests of the entire class.

CONCLUSION

For the reasons stated above, we submit that the order of the district court denying certification of the broad class proposed by the plaintiffs-appellants should be reversed.

Respectfully submitted,

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2401 E Street, N.W.
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January 31, 1977

ps

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing brief of the Equal Employment Opportunity Commission have this day been mailed, postage pre-paid, to the following counsel of record:

Mary Ellen Wynn
Williams, Avery & Wynn
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New Haven, Conn.
06510

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COMMISSION
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February 1, 1977

Attachment A

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

STANLEY WILLIAMS, ET AL., PLAINTIFFS	)	
VS.	)	CIVIL ACTION NO. N-7
WALLACE SILVERSMITHS, INC. A DIVISION OF HMW INDUSTRIES, INC., DEFENDANT	)	

AFFIDAVIT

STATE OF CONNECTICUT : ss. New Haven June , 1976

COUNTY OF NEW HAVEN :

Mary Ellen Wynn, having been duly sworn, hereby deposes a
says:

1. I am the attorney for the named plaintiffs in the abo
entitled action and I seek to represent the class of plaintif
described in the Motion for Class Action Certification filed
herewith.

2. I believe that I can effectively represent the named
plaintiffs and the class to be certified in this matter.

3. I am experienced in Title VII and other employment di
crimination litigation; currently I represent plaintiffs in t
following matters: Civil Action Nos. N-75-272, N-75-276, B-75
N-75-253, N-75-211, N-76-147, H-76-167 and H-76-___(filed 6-9
in addition to the present matter. Of these, five have been
as class actions.

EXHIBIT A

HHH

WILLIAMS, AVERY AND WYNN
ATTORNEYS AT LAW
259 CHURCH STREET
NEW HAVEN, CONNECTICUT
06510
(203) 864-9831

4. Through personal inspection of the personnel files o defendant containing all application forms on file, in additi my inspection of other company files, material produced in r ponse to several Motions to Produce and informal demands for documents and data, and a deposition of the defendant's Pers Manager lasting some six days, I have compiled the following of potential class members:

APPLICANTS FOR POSITIONS AT WALLACE SILVERSMITHS

Date of Application	Name of Applicant
2-28-72	Clarence Brooks
2-23-72	William Burden
2-28-72	Philip Carr
8-28-73	James Davis
1-17-72	Jimmie Davis
6-14-72	Ralph Day
9-14-72	Charles Grace
10-21-71	Robbie Graves
8-3-73	Edward Green
5-25-72	Horace Green
5-25-72	Mary Eliz Green
10-2-73	Robert Hayward
6-14-72	Flossie Henderson
2-12-73	Johnny Hicks
3-23-72	Robert Holmes

WILLIAMS, AVERY
AND WYNN
ATTORNEYS AT LAW
248 CHURCH STREET
NEW HAVEN, CONNECTICUT
06510

203- 562-9931

Date of Application	Name of Applicant
8-7-72	James Johnson
9-13-72	Robert Jordan, Jr.
5-16-72	Lessie McGirt
6-14-72	Florrie North
8-31-72	David Parker
9-13-72	Albert Payne, Jr.
9-19-72	Ray Rich
1-27-72	Maurice Tompkins
7-28-72	John Turner
1-10-73	Norman Warner
3-16-73	Mary Watkins
8-8-73	Biz Ann Williams
1-12-72	Laverne Williams
8-23-71	Janice Wilson
4-25-72	Alicia Winns
1-8-72	Estoria Winson
1-17-73	Gene Blair
5-21-73	Anne Mae Inman
11-16-72	Charles Harris
6-12-72	Curtis Rawls
3-23-72	Louis Wade, Jr.
6-18-73	Booker T. Williams
2-16-72	Doreen Wilson

WILLIAMS, AVERY
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06510

[illegible] 562-9931

Date of Application	Name of Applicant
8-2-71	Dorothy Wilson
12-27-73	Irvin Inman
circa 1970	Virginia Jones
6-12-72	Randolph Coppage
Summer 1974	Sterling Shanklin
5-21-73	Diane Scott
Summer 1974	Tally Scott
1970-71	Norwood Williams

FORMER EMPLOYEES*

Name	Date of Separation
Calvin Fields	5-28-74
Mitchell Portee	5-2-74
Thelma Shanklin	8-23-74
Riy C. Forrest	2-1-74
Stanley Howell	9-26-74
John L. Fields	6-30-71
Robert McBurrows	6-28-71
Baronelle Gilliams	7-27-72
Andrew Proto	6-21-74
Nancy Lee Benjamin	12-27-73
Johnny Wallace	9-12-73
Leonard B. James	11-8-73
Raymond Kirby	1-24-72

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Name	Date of Separation
Alvin Shelton	4-26-74
Leory S. Thomas	1-22-74
William Vaughn	12-3-71
Peter Wilson	8-10-71
Michael Tomkins	8-16-73
Dexter Thomas	8-3-74
Willie Elbert	3-30-73
Stanley Williams	12-14-73
Delton Jones	12-24-74

PRESENT EMPLOYEES**

Name
Charles Jones
James Riggins
Otis Williams
Paul Williams
Wilbert Draughn

* List does not include the names of at least 10 black persons who worked for Paul A. Straub Co., a now-defunct subsidiary of HMW Industries, Inc. whose EEO employment statistics were gat and submitted by Wallace together with and on the same forms Wallace's. Plaintiffs reserve the right to claim these indiv as members of the class after further depositions of Company officials are taken.

** Plaintiffs' counsel has been informed by defendant's couns that several other black persons have recently been hired by Company. They, of course, and any other newly-hired employee are properly members of the class.

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